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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

THE AMERICAN BEVERAGE
ASSOCIATION, CALIFORNIA RETAILERS
ASSOCIATION, CALIFORNIA STATE
OUTDOOR ADVERTISING ASSOCIATION,

Plaintiffs,

v.

THE CITY AND COUNTY OF SAN
FRANCISCO,

Defendant.

Civil Action No. 3:15-cv-03415-EMC

**JOINT STIPULATION AND ~~[PROPOSED]~~
ORDER REGARDING NON-
ENFORCEMENT DURING PENDENCY
OF THE CASE**

RECITALS

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3 1. On June 25, 2015, Defendant The City and County of San Francisco (the “City”
4 or “Defendant”) enacted Ordinance No. 98-15, amending S.F. Admin. Code § 4.20 and entitled
5 “Ordinance amending the Administrative Code to prohibit advertising of sugar-sweetened
6 beverages on City property” (the “Ordinance”).

7 2. Plaintiffs The American Beverage Association, California Retailers Association,
8 and California State Outdoor Advertising Association (collectively “Plaintiffs”), filed a
9 complaint (Docket No. 1) on July 24, 2015, asking this Court, *inter alia*, to declare that the
10 Ordinance violates the First Amendment and the Due Process Clause of the Fourteenth
11 Amendment to the United States Constitution, and to enter an injunction barring the City and any
12 of its officers, employees, or agents from enforcing or threatening to enforce the Ordinance and
13 any of its implementing regulations.

14 3. Plaintiffs alleged that the Effective Date of the Ordinance was July 25, 2015—
15 thirty days after its enactment.

16 4. On July 24, 2015, Plaintiffs also filed a motion for a preliminary injunction
17 (Docket No. 14), requesting that this Court preliminarily enjoin the City from enforcing or
18 causing to be enforced any provision of the Ordinance or any regulations implementing the
19 Ordinance, pending a final judgment.

20 5. On August 11, 2015, the City filed a statement of non-opposition to Plaintiffs’
21 motion for a preliminary injunction (Docket No. 30), and indicated that it would further update
22 the Court regarding whether, in light of the constitutional concerns raised by Plaintiffs’
23 complaint and motion for a preliminary injunction, the City planned to enforce the Ordinance.

24 6. After conferring with Plaintiffs, the City has agreed not to enforce the Ordinance
25 pending a final judgment. Pursuant to this stipulation, the Ordinance may not be enforced
26 against any party as to any leases, permits, or agreements entered into, renewed, or materially
27 amended on or before the date of a final judgment from this Court.
28

1 7. Although Plaintiffs reserve the right to seek attorneys' fees at an appropriate time,
2 Plaintiffs agree not to contend that this stipulation supports any application for attorneys' fees.

3 8. Plaintiffs further agree that the City's agreement not to enforce the Ordinance
4 applies only to Ordinance No. 98-15 and not to any subsequent legislation the City may adopt
5 relating to the advertisement of sugar-sweetened beverages. All parties reserve their claims
6 and/or defenses concerning any subsequent legislation.

7 9. The parties propose that Plaintiffs' motion for a preliminary injunction be held in
8 abeyance pending further developments in this matter, but respectfully submit that it would serve
9 the interests of efficient and orderly process for the Court to vacate the current briefing schedule
10 and hearing date, remove the motion from the calendar, and refrain from deciding the motion for
11 a preliminary injunction at this time.

STIPULATION

The parties accordingly stipulate as follows:

1. The City agrees and stipulates to non-enforcement of the Ordinance pending a final judgment in this case from this Court. Pursuant to this stipulation, the Ordinance may not be enforced against any party as to any leases, permits, or agreements entered into, renewed, or materially amended prior to and including the date of a final judgment from this Court. This stipulation is intended to allow for the orderly adjudication of the complaint.

2. Plaintiffs reserve the right to seek attorneys' fees at an appropriate time, but agree not to contend that this stipulation supports any application for attorneys' fees.

3. The parties jointly request that the Court hold Plaintiffs' motion for a preliminary injunction in abeyance pending further developments in this matter.

Dated: August 24, 2015

Respectfully submitted,

LATHAM & WATKINS LLP

By /s/ James K. Lynch

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¹ I hereby attest that concurrence in the filing of this document has been obtained from each of the other Signatories.

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The City and County of San Francisco

~~[PROPOSED]~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED

Dated: 8/25/15

